

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MICHIGAN
NORTHERN DIVISION

CURTIS N. HARRIS,

Plaintiff,

v.

Case No. 2:05-cv-265
HON. GORDON J. QUIST

PEGGY OATLEY, et al.,

Defendants.

**OPINION AND ORDER APPROVING MAGISTRATE JUDGE'S
REPORT AND RECOMMENDATION**

The Court has reviewed the Report and Recommendation filed by the United States Magistrate Judge in this action on August 8, 2006. The Report and Recommendation was duly served on the parties. The Report recommends dismissal of the case on the merits. The Court has received objections from plaintiff and from defendant Berhane. In accordance with 28 U.S.C. § 636(b)(1), the Court has performed *de novo* consideration of those portions of the Report and Recommendation to which objection has been made.

Defendant Berhane argues that the court should revoke plaintiff's *in forma pauperis* status because plaintiff has had three cases dismissed in the past. Not every dismissal constitutes a strike. As the report explains, two of those cases were dismissed without prejudice for failure to exhaust grievance remedies. The cases relied upon by defendant do not constitute a strike. Prior to service of the complaint, as part of the initial review process and when *in forma pauperis* status is requested, the court determines whether a prisoner has three strikes. Plaintiff did not have three strikes at the time he filed his complaint.

Plaintiff objects to the dismissal of his complaint, arguing that he stated an Eighth Amendment claim. Plaintiff has failed to show that defendants were deliberately indifferent to a serious medical need.

THEREFORE, IT IS ORDERED that the Report and Recommendation of the Magistrate Judge (Docket #67) is approved and adopted as the opinion of the court.

Dated: September 22, 2006

/s/ Gordon J. Quist
GORDON J. QUIST
UNITED STATES DISTRICT JUDGE